

Janet Alter
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January 26, 2001

VIA FEDERAL EXPRESS

The Office of the Secretary
Federal Communications Commission
445 12th Street, N.W.
Room TWB 204
Washington, DC 20554

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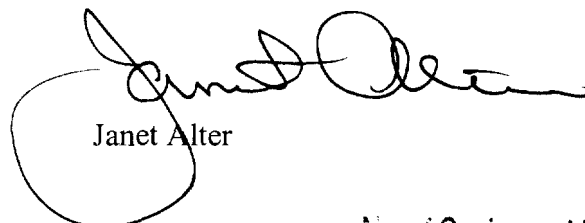
Attention: Magalie Roman Salas

Re: CS Docket No. 00-253/-- Comments on City Signal Communications,
Inc. Petition for Declaratory Ruling for Use of Rights-of-Way in
Cleveland Heights, Ohio

Dear Ms. Salas:

Enclosed you will find one (1) original and six (6) copies of Comments on City Signal Communications, Inc. Petition for Declaratory Ruling concerning use of public rights-of-way for access to poles in Cleveland Heights, Ohio pursuant to Section 253. Although originally filed as the City of Cleveland Heights' Opposition to City Signal's Petition for Declaratory Ruling, the City is refileing its opposition as Comments pursuant to my conversation with Marjorie Greene of the Cable Services Bureau.

Very truly yours,



Janet Alter

JA:kaw

Enclosure

cc: Trudy Hercules (w/encl.)
Janice Myles (w/encl.)
International Transcription Services, Inc. (w/encl.)
John H. Gibbon, Esq. (w/o encl.)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554

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In the matter of

City Signal Communications, Inc.

File No.:

Petitioner,

CS Docket No. 00-253

v.

City of Cleveland Heights,

Defendant.

Opposition to Petition for Declaratory Ruling

I. INTRODUCTION

The City of Cleveland Heights, Ohio (the "City"), files this Opposition to Petition for Declaratory Ruling filed by City Signal Communications, Inc. ("City Signal"), a telecommunications company under the laws and regulations of the State of Ohio. In its Petition, City Signal claims that the City has refused to grant it a permit to use the public right-of-way to string aerial fiber optic cable for telecommunications purposes on existing utility poles in the City in violation of federal and state law. Specifically, City Signal claims that the City's actions are in violation of §253 of the Telecommunications Act of 1996 (47 U.S.C. § 253). As more fully explained below, the City's treatment of City Signal's request to use the City's right-of-way has been non-discriminatory and competitively neutral because all telecommunications providers requesting authorization to use the City's rights-of-way are treated in a similar manner with the same requirements.

II. FACTS AND ARGUMENT

The City of Cleveland Heights is an “inner ring” suburb of approximately 55,000 residents in the Cleveland Metropolitan Area. (See Affidavit of John H. Gibbon attached) The City’s residential and business districts were developed primarily in the first half of the 20th century. Accordingly, the City of Cleveland Heights is vitally concerned with the maintenance of these older residential and business districts and has instituted a number of programs to insure that the City remains competitive with the newer suburban communities in the Cleveland Area by continuing to attract and keep residents and businesses.

The City is actively investigating the possibility of abating the visual blight caused by the proliferation of wires and boxes on telephone poles particularly in the City’s older business districts. As a part of this effort to maintain property values and commercial vitality, Cleveland Heights City Council is currently considering a comprehensive ordinance that would assist in controlling the visual blight in the City’s rights-of-way. Currently the only telecommunications providers that have wires and other facilities on poles, pursuant to the City’s permission, are the local telephone company and the cable operator. These wires and facilities have been on poles in the City for more than twenty years.

City Signal has proposed to place fiber and related facilities in the rights-of-way of the City’s older business districts. If strung aerially, these additional wires, fiber and/or boxes on the poles within the City’s business districts would have a blighting influence and constitute a public nuisance.

Over the past several years, the City has been approached by numerous telecommunications providers requesting authorization to use the City’s rights-of-way for telecommunication purposes. Several years ago, the City entered into an agreement with MFS to place fiber underground in the rights-of-way of a major City street. The City has offered, and is more than willing, to enter into a

similar agreement with City Signal, as well as several other telecommunications providers who are requesting authorization to use the City's rights-of-way.

In fact, the City is currently finalizing negotiations with Metromedia to place underground conduit in certain areas of the City in which City Signal has proposed to place fiber. Metromedia has agreed to construct underground conduit, and a written agreement is currently being prepared by Metromedia. Likewise, John Gibbon, the City's Law Director, has had numerous negotiations with City Signal regarding its proposal to place fiber in the City's rights-of-way. Prior to the filing of City Signal's Petition, he understood that City Signal had agreed to utilize the underground conduit that Metromedia will construct, rather than stringing fiber aurally through the City.

Section 253 of the Telecommunications Act of 1996 provides that no local government may "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." In accordance with Section 253, the City has treated City Signal's request to use the rights-of-way in the same manner in which it has treated other telecommunications providers. Other than the local telephone company and cable operator, whose facilities have been on poles for over twenty years, the City has not authorized any telecommunications provider to string fiber aurally in the City's rights-of-way. Although the City is vitally concerned about visual blight in its older business districts, it is actively engaged in negotiations with other telecommunications providers, including City Signal, that have applied to use the City's rights-of-way to place fiber in underground conduit.

Although negotiations with City Signal may not have progressed as quickly as City Signal had anticipated, the City of Cleveland Heights has treated City Signal in a non-discriminatory and competitively neutral manner. No new entrants in the City's rights-of-way have been permitted to

string fiber aerially in the City. Only incumbent telecommunication providers whose facilities have been in place in excess of twenty years have fiber on utility poles in the City of Cleveland Heights.

The City's requirements for new entrants has not had the "effect of prohibiting" telecommunications providers from using the City's rights-of-way. As stated above, the City has reached successful negotiations with MFS and is in the process of finalizing negotiations with Metromedia. The City's requirements with respect to City Signal are competitively neutral and non-discriminatory because they are no more onerous than its requirements for other telecommunications providers using the City's rights-of-way.

III. REQUEST FOR A HEARING BEFORE THE FCC.

Because preventing further visual blight is a vital concern of the City of Cleveland Heights, the City requests a hearing before the FCC prior to the issuance of any order compelling the City to permit City Signal to place facilities on poles within the City's older business districts.

IV. CONCLUSION

The City of Cleveland Heights' requirements for telecommunications providers to use the public rights-of-way are competitively neutral and non-discriminatory. Accordingly, the City respectfully requests that the FCC deny Petitioner City Signal's request to preempt the City of

Cleveland Heights' requirements and order that the City grant a permit to City Signal to construct aerial fiber optic facilities.

10/25/2000
Date

John H. Gibbon
Name

John H. Gibbon (Reg. No. 0010986)
Law Director
City of Cleveland Heights
40 Severance Circle
Cleveland Heights, Ohio 44118
Telephone: (216) 291-5775
Facsimile: (216) 291-3731
Email: jhg@walterhav.com

CERTIFICATE OF SERVICE

A copy of the foregoing Opposition to Petition for Declaratory Ruling was deposited in the regular U.S. Mail, postage prepaid, addressed to Nathaniel Hawthorne, Esq., Attorney for Petitioner, 27600 Chagrin Boulevard, Cleveland, Ohio 44122 this 25 day of October, 2000.

John H. Gibbon
John H. Gibbon

STATE OF OHIO

COUNTY OF CUYAHOGA

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) SS:

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AFFIDAVIT OF JOHN H. GIBBON

JOHN H. GIBBON, being duly sworn according to law, deposes and says:

1. I am the Law Director for the City of Cleveland Heights, Ohio;
2. Cleveland Heights is an “inner ring” suburb of approximately 55,000 residents located in the Cleveland metropolitan area. It shares a common boundary with the City of Cleveland;
3. Most of the housing stock in Cleveland Heights was constructed in the first half of the twentieth century and the City has five major business districts which were primarily developed in the first half of the twentieth century;
4. The City of Cleveland Heights is vitally concerned with the maintenance of its housing stock and its older business districts and has instituted numerous programs to help insure that the City continues to attract residents and businesses and that it is competitive with the newer suburban communities in the Cleveland area;
5. Cleveland Heights is an “entitlement community” under the Federal Community Development Block Grant Program and during the past twenty-five years it has spent large sums of both federal and local funds to revitalize and maintain its older business districts;
6. As a part of its overall effort to maintain property values and commercial vitality, the City has been investigating the possibility of abating the visual blight caused by the proliferation of wires and boxes on telephone on telephone poles within the community; particularly in its older business districts;

7. A comprehensive ordinance to assist in controlling the visual blight in the rights of way is being considered by City Council and has received a first reading in City Council;

8. Four telecommunications companies, including City Signal, are currently seeking to place additional fiber, wires and/or boxes in the City's rights of way;

9. The route proposed by City Signal for its fiber and related facilities passes through older business districts within the City;

10. Additional wires, fiber and/or boxes on the poles within the City's older business districts would be a blighting influence;

11. The only telecommunications provider which has wires or other facilities on poles within the City with the City's permission is the local telephone company and Cablevision pursuant to a cable television franchise. These wires and facilities have been on poles within the City for more than twenty years;

12. Several years ago the City was approached by a telecommunications provider known as MFS to use the City's rights of way for telecommunication purposes. After negotiations, the City entered into an agreement permitting MFS to place fiber under Mayfield Road within the City of Cleveland Heights;

13. The City has offered to enter into a similar agreement with City Signal;

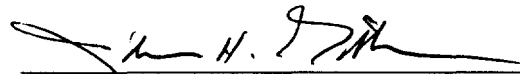
14. The City has had numerous conversations with City Signal regarding their proposal to place fiber within the City of Cleveland Heights and the undersigned affiant understood that City Signal had verbally agreed not to place fiber on poles within the City's older business districts but rather to utilize underground conduits which the City is causing to be placed within the rights of way through agreement with a company called Metromedia;

15. The City and Metromedia have reach verbal agreement for the above and a written agreement is being prepared by Metromedia attorneys;

16. The City has not intentionally delayed City Signal from using the City's rights of way except for the reasons stated above and generally welcomes telecommunication providers within the City so long as they do not put additional facilities on poles within the older business districts and otherwise adhere to the City's ordinances;

17. Preventing further visual blight in the older business districts of the City is a vital concern to the City of Cleveland Heights and a hearing before the FCC is requested prior to the issuance of any order which would compel the City to permit City Signal to place facilities on poles within the City's older business districts;

FURTHER AFFIANT SAYETH NAUGHT.



JOHN H. GIBBON

SWORN TO BEFORE ME and subscribed in my presence this ____ day of October, 2000.



NOTARY PUBLIC

PEG EAGLE, NOTARY PUBLIC
State of Ohio
My Commission Expires July 25, 2004